where the same as to appreciation from artificial causes.[8] But advances through the efforts of a transferee of the husband [9] do not benefit the wife. Some cases,[10] against the great weight of authority,[11] apply the same rule even to the case of unassisted appreciation during the stranger's possession.

The technical reasons for differentiating the transferee of the husband from the heir or devisee are not altogether satisfactory. That an alienee should not be liable to the wife for more than he can recover from the heir on a common-law warranty [12] is not a consideration which should survive the existence of the common-law warranty itself. To say that it is the heir's folly to postpone the assignment to the improvements,[13] is in part to beg the question; for the act is foolish primarily because the law penalizes it. The voluntary nature of an alienee's improvements has been declared a reason for the widow's not sharing in them; [14] but such an argument would as well apply to improvements by an heir. The courts have relied most strongly upon the desirability of protecting an alienee in his outlays.[15] This applies with obvious force to the period between the alienation and the death of the husband. But it is hard to see wherein after the death the position of an alienee differs from that of an heir: each may at once assign dower and thereafter be free to make improvements on his own property. And there are intimations in the decisions that an alienee will not be protected if he improves after the death,[16] or after he has notice thereof.[17] The latter suggestion accords with a general principle [18] allowing an occupier of property under color of title the value of such improvements only as he has effected in good faith; [19] the former would establish the rule, applicable to heir and transferee alike, that a woman has no interest in improvements, other than her husband's, during coverture, but may share in all increases, naturally or artificially caused, after his death has consummated her right. However, the only case found in which argument was made for a difference in result as to an alienee's improvements before and after the husband's death, rejects such a distinction.[20]

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THE CONNECTION OF INDEPENDENT TELEPHONE COMPANIES. — The public nature of telegraph and telephone systems was early recognized and individuals or corporations operating them were subjected to the con-

[8] Westcott *v.* Campbell, 11 R. I. 378. *Contra*, Manning *v.* Laboree, 33 Me. 343.

[9] McClanahan *v.* Porter, 10 Mo. 746. In Campbell *v.* Murphy, 2 Jones Eq. (N. C.) 357, the court gave the widow no share in improvements by the heir's transferee. This result seems hard to reconcile with any principle; such transferee must surely take subject to all the incidents of the widow's common law right of dower.

[10] Tod *v.* Baylor, 4 Leigh (Va.) 498. In New York the attainment of this result must be ascribed to the influence of statute. Shaw *v.* White, 13 Johns. (N. Y.) 179.

[11] Allen *v.* McCoy, 8 Oh. 418.

[12] Thompson *v.* Morrow, 5 Serg. & R. (Pa.) 289. The origin of this explanation is to be found in the Hale MSS. cited in Hargr. Co. Litt. 32 a, n. (8).

[13] Catlin *v.* Ware, *supra.*

[14] Thompson *v.* Morrow, *supra.*

[15] Powell *v.* Monson, etc., Man'f. Co., *supra.*

[16] Price *v.* Hobbs, 47 Md. 359, 388.

[17] Felch *v.* Finch, 52 Ia. 563.

[18] Viner's Abr. Tit. Discount, 1–4.

[19] Bright *v.* Boyd, 1 Story (U. S.) 478.

[20] Van Dorn *v.* Van Dorn, 3 N. J. L. 270.

trol of the common law over public service.[1] Thus, under the duty to furnish equal facilities to all,[2] both telegraph and telephone companies are obliged to forward respectively telegrams and telephone messages coming over the lines of neighboring, even though competing, companies.[3] Somewhat analogous to this is the obligation of a railroad to transmit freight brought to it by a connecting line.[4] However, there is no common law obligation on a carrier to allow to pass over its tracks the traffic of a connecting carrier, which would be a decided inconvenience to it; nor is a telegraph company bound to join its wires to those of another company, although some slight mutual benefit would usually result; and it would seem to follow that a telephone company is not required to connect its switchboard. But as the relayed transmission of a telephone message does not give the personal communication which makes the telephone more serviceable than the telegraph, and as a switchboard connection would be a decided mutual advantage to the customers of the two lines, the courts might have compelled such an arrangement.[5] They have recently gone so far as to refuse to allow the discontinuance of a switchboard connection when once established. *State ex rel. Goodwin* v. *Cadwallader*, 87 N. E. 644 (Ind.).

The important question then arises, whether a system which has permitted such a connection with one company is bound to offer an equal advantage to all companies of that class and locality. This has been answered by a recent decision to the effect that a contract by one company to give exclusive connection to another company is unenforcible as tending to create a monopoly and as a contract by a public servant involving discrimination of service. *United States Telephone Co.* v. *Central Union Telephone Co. et al.*, 171 Fed. 130 (C. C., N. D. Ohio). This case is compared to those known as the Express and Hackmen cases, which present a conflict as to whether a railroad may give exclusive rights to any express or carriage company.[6] But even if a railroad may grant a monopoly of such dependent services, it does not follow that it may bind itself to permit only one road, for instance, to run a through train over its tracks. Having once, by such a contract made itself a highway for railroad traffic it would then come under the duty to render equal facilities to all; so that the provision making the arrangement exclusive would be ineffectual. Similarly, a switchboard connection between two telephone companies cannot be made exclusive. Thus, as the situation usually presents itself, a long distance company must not discriminate in its local connections, nor a local company in its long distance connections; and although at present the courts do not compel such a connection in the first instance, when once it has been established they will prevent its discontinuance.

The cases under discussion are at present the only decisions directly

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[1] See 15 HARV. L. REV. 309.

[2] Delaware & A. Telegraph & Telephone Co. *v.* State of Delaware *ex rel.* Postal Telegraph Cable Co., 50 Fed. 677.

[3] State *ex rel.* Gwynn *v.* Citizens' Telephone Co., 61 S. C. 83.

[4] A complete discussion of the analogous cases referred to will be found in an article in 22 HARV. L. REV. 564.

[5] This course has been taken by legislation which is held to be constitutional. Billings Mutual Telephone Co. *v.* Rocky Mountain Bell Telephone Co., 155 Fed. 207.

[6] Donovan *v.* Pennsylvania Co., 199 U. S. 279; Express Cases, 117 U. S. 1. See 20 HARV. L. REV. 526.

on this point,[7] and the opinions, which recognize the distinction between the services rendered by a telephone company and other methods of transferring intelligence or matter, should be controlling in future litigation of the kind.

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CONSTRUCTIVE POSSESSION UNDER COLOR OF TITLE. — Ordinarily the acquisition of realty by means of an adverse holding is limited to the *pedis possessio*, or actual occupation.[1] In contemplation of law, however, adverse possession is sometimes extended to apply to unoccupied lands held under color of title. This doctrine of constructive possession has been almost wholly developed in this country and Canada where it has been found well adapted to the exigencies of unsettled regions.[2] England has never fully admitted the refinement.[3]

Of the requirements for a constructive adverse possession several are universally admitted, while as to others there is a decided conflict. (1) There must be color of title; namely, that which has the appearance of title but which is in fact none.[4] Almost universally some instrument is required,[5] and decisions which allow color of title without a writing are really authorities on what constitutes a sufficient *actual* possession.[6] The writing must accurately describe the premises and must purport to convey title.[7] It appears, therefore, that color of title is important in showing first, the character of the claim, and second, its extent.[8] In a recent decision it is properly regarded as a piece of evidence. *Roe* v. *Tennessee Ry. Co.*, 50 So. 230 (Ala.). (2) There must be a claim of ownership as well as color of title, and hence the instrument must purport to convey a fee.[9] (3) There must be an actual possession of part of the land indicative of a further claim. The function of this requirement is to give notice of the adverse claim and to afford ground for a possessory action.[10] So it is not enough that the actual possession be only of the claimant's own land;[11] and any alienation of the *pedis possessio* is fatal.[12] Whether or not the part constructively held must be a reasonable appendage of the part actually possessed, is disputed; the slight weight of authority leaning against such requirement.[13] (4) As to

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[7] But *cf.* Rural Home Telephone Co. *v.* Kentucky & I. Telephone Co., 107 S. W. 787; Campbellsville Telephone Co. *v.* Lebanon L. & L. Telephone Co., 118 Ky. 277; Cumberland Telephone & Tele. Co. *v.* Cartwright Creek Telephone Co., 108 S. W. 875; Matter of Baldwinsville Telephone Company, 24 N. Y. Misc. 221.

[1] Norris *v.* Ile, 152 Ill. 190.

[2] Simpson *v.* Downing, 23 Wend. (N. Y.) 315; McKinnon *v.* McDonald, 13 Grant Ch. (N. C.) 152.

[3] In a recent English decision the court declared that constructive possession is to be inferred only to give effect to a contractual obligation. Glynn *v.* Howell, 100 L. T. R. 324 (Ch. Div., May 1, 1909).

[4] Wright *v.* Mattison, 18 How. (U. S.) 50.

[5] Allen *v.* Mansfield, 108 Mo. 343.

[6] Hodges *v.* Eddy, 38 Vt. 327; Allen *v.* Holton, 20 Pick. (Mass.) 458.

[7] Humphries *v.* Huffman, 33 Oh. 395; Deffback *v.* Hawke, 115 U. S. 392.

[8] Welborn *v.* Anderson, 37 Miss. 155.

[9] Bakewell *v.* McKee, 101 Mo. 337; Dewey *v.* McLain, 7 Kan. 126.

[10] Bailey *v.* Carleton, 12 N. H. 9; Steedman *v.* Hilliard, 3 Rich. (S. C.) 101.

[11] Bailey *v.* Carleton, *supra.*

[12] Cunningham *v.* Frandtzen, 26 Tex. 34.

[13] Ellicott *v.* Pearl, 10 Pet. 412; Hicks *v.* Coleman, 25 Cal. 122. In New York it is